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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,796	09/23/2003	William B. Dawson	KEY 1028USC2	4101

9561 7590 03/21/2005

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EXAMINER

A, PHI DIEU TRAN

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/668,796

**Applicant(s)**

DAWSON ET AL.

**Examiner**

Phi D A

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 3,6,7 and 12-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,8-11 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-13, 19, drawn to a landscaping block, classified in class 52, subclass 609.
  - II. Claims 14-18, drawn to a method installing a landscaping block system, classified in class 52, subclass 745.05.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the product as claimed can be used in a materially different process of using that product; for example, the block being stacked vertically on the sides to form a vertical wall.
3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
4. This application contains claims directed to the following patentably distinct species of the claimed invention: figures 1A-1B, 2A-8, and 9A-9C.

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Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. During a telephone conversation with Terry Wiles on 3/11/05 a provisional election was made without traverse to prosecute the invention of group I and specie of figures 2A-8, claims 1-2, 4-5, 8-11, 19. Affirmation of this election must be made by applicant in replying to this Office action. Claims 3, 6-7, 12-18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-2, 4-5, 8-11, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Steinwender (5069015).

Steinwender (figure 2) shows a landscaping block (20) comprising a top surface and an opposed bottom surface, first and second opposed sides (of part 28), each side extending from the top surface to the bottom surface, opposed first and second ends (the ends facing upwardly and downwardly), each end extending from the top surface to the bottom surface and from the first side to the second side, the first end (the end of part 28 which faces upwardly) being wider than the second end at a surface selected from the top and bottom surfaces, the first end being larger in area than the second end, the first side including a first upper face extending from the top to a first ledge, the first ledge extending to a first lower face, the first ledge extending outwardly from the first side, the second side comprising a second upper face extending from the

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top to a second ledge, the second ledge extending to a second lower face, the second ledge extends outward from the second side, when the first side of the landscaping block is placed adjacent the second side of another landscaping block, the first and second ledges form an interlocking relationship (inherently capable of functioning as claimed), the block being positioned such that when the first side of the landscaping block is placed adjacent either the first or second side (the side of part 28) of another of the landscaping blocks, the first and second ledges forming an interlocking relationship.

9. Claims 1-2, 4-5, 8-11, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Ciccarello (5984589).

Ciccarello (figure 10) shows a landscaping block comprising a top surface and an opposed bottom surface, first and second opposed sides (the bigger lower part 13), each side extending from the top surface to the bottom surface, opposed first and second ends, each end extending from the top surface to the bottom surface and from the first side to the second side, the first end (figure 10, the side designated as 13) being wider than the second end at a surface selected from the top and bottom surfaces, the first end being larger in area than the second end, the first side including a first upper face extending from the top to a first ledge (formed by the intersection of top part 13 and the upper surface of the lower part), the first ledge extending to a first lower face, the first ledge extending outwardly from the first side, the second side comprising a second upper face extending from the top to a second ledge, the second ledge extending to a second lower face, the second ledge extends outward from the second side, when the first side of the landscaping block is placed adjacent the second side of another landscaping block, the first and second ledges form an interlocking relationship (inherently capable of

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functioning as claimed), the block being positioned such that when the first side of the landscaping block is placed adjacent either the first or second side of another of the landscaping blocks, the first and second ledges forming an interlocking relationship.

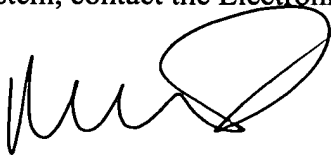
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different block designs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136, or 571-272-6864 only after April 07, 2005. The examiner can normally be reached on Monday-Tuesday, Thursday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Phi Dieu Tran A

3/14/05